

United States v. Alamin, No. 01-50278**JUL 10 2003**

REINHARDT, Circuit Judge, dissenting:

CATHY A. CATTERSON**U.S. COURT OF APPEALS**

In my view, the manner and substance of the district court's questioning of defense witnesses requires reversal. It is difficult for me to understand how my able colleagues could have concluded, after reading the trial transcript, that the district court's questioning of those witnesses did not "convey[] the appearance of advocacy or partiality." Indeed, the majority acknowledges that the judge questioned 12 of the 16 witnesses for the defense and none of the witnesses for the prosecution, and that the court's questioning of at least four defense witnesses "seemed designed to undermine the witnesses' credibility." One of those four was Alamin himself. After Alamin said that he was an accountant, the district court asked him the utterly irrelevant, apparently rhetorical, question, "Do you know that an accountant has to be accurate in what he puts down in the books of any person?" Such a question could have had no purpose other than to signal to the jury the court's belief that Alamin was less than truthful. The court's equally irrelevant questioning as to the place of residence of one of Alamin's children, who was being raised by grandparents, also suggested strongly that it had serious doubts about Alamin's testimony generally. The court's questioning of three other defense witnesses was of a similar nature. By the time the district judge was through examining the defense witnesses, no perceptive juror could have doubted

which side the judge thought was being truthful. In a case, such as this, in which the defense rests on the credibility of the defense witnesses, and particularly on the credibility of the defendant, the type of “questioning” in which the court engaged serves to deprive the defendant of a fair trial. Neither the fact that the district judge waited until the parties finished with the defense witnesses and *then* appeared to take over the prosecution’s task of cross-examining them, nor the fact that he conducted his cross-examination politely rather than in a rude manner, undermines this conclusion; in fact, it serves to make the court’s insertion of its own personal beliefs into the proceedings all the more damaging. I therefore respectfully dissent.